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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/735,572

12/12/2000

Eric Edwards

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7590

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EXAMINER

SAJOUS, WESNER

ART UNIT

PAPER NUMBER

2676

DATE MAILED: 11/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/735,572

Applicant(s)

EDWARDS ET AL.

Examiner

Sajous Wesner

Art Unit

2676

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 December 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9, 14-22 and 27-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 14-22 and 27-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/30/05, 9/1/05</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### **Remark**

This communication is responsive to the amendment and response dated August 17, 2005. Claims 1-9, 14-22, and 27-30 are presented for examination. Claims 10-13, 23-26, and 31-33 are canceled without disclaimer.

### ***Response to Arguments***

1. Applicant's arguments with respect to claims 1, 3, 8, and 27 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-4, 8-9, and 27-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sako (US 5689575) in view of Wang et al. (US 5802361).

Considering claims 1 and 3, Sako discloses a computerized method (see item 1 of fig. 1(a) for generating a color template design comprises generating (54, fig. 7b) a histogram for a source image (see figs. 11 and 14-15), and indicates a color histogram for a template design used to display (4) a source image (see col. 6, lines 1-23 and lines 58-60).

Sako fails to teach suggesting a color for subsequent user selection based on a generated histogram, by displaying at least one color for the template design.

Wang, in a similar art, teaches suggesting a color for subsequent user selection by displaying at least one color for the template design (see col. 15, line 52 to col. 16, line 3), based on a generated histogram (see col. 11, lines 32-59, col. 12, lines 36-62).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the color histogram template of Sako to include the suggestion for color selection for subsequent user selection for the template design, in the same conventional manner as taught by Wang; in order to allow the computer user to make changes to the overall scheme of the image so as to match the color in an existing image template. See col. 15, line 52 to col. 16, line 3.

Re claim 2, Sako discloses a color that matches a color of the source image *(e.g., determine which color that occurs more frequently in the input image based on histogram values from a group of similar colors represented by the box in the histogram. See col. 5 lines 61 to col. 6 line 23. Note that in determining the color that is used in the input image based on the group of similar colors in the box histogram, the system inherently matches a color of the color histogram with the input or source image).*

As per claim 4, Sako discloses a selected portion of the source image is used to generate the histogram. *(It is noted that since the system at step 22 detects a facial area of the captured image (see col. 4, lines 60-61) and later, at step 22e, generates a histogram using the input image (see fig. 14 and col. 6, lines 58-61), it is obvious that a selection portion of the source image need be selected for the generation of the*

Art Unit: 2676

*histogram. See the depiction at fig. 14 in which an area portion  $[p(x, y)]$  of the input image is utilized for the generation of histogram).*

The invention of claims 27-28 is computer-readable medium that contains features that are analogous to the limitations recited in claims 1-3, respectively. This being the case, the limitations of claims 1-3 are rejected under the same rationale as set forth above for claims 1-3, respectively.

Considering claims 8 and 9, Wang discloses providing at least one color for selection by selecting from a group consisting of multiple colors and presenting the colors for selection concurrently by allowing the user to select at least one of the provided colors. See col. 15, line 52 to col. 16, line 3.

Claims 29-30 contain features that are analogous to the limitations recited in claims 8 and 9, respectively. This being the case, the limitations of claims 29-30 are therefore rejected for the same reason as claims 8 and 9, respectively.

4. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sako (US 5689575) in view of Takayama et al. (US 6222570).

As per claim 5, Sako discloses most claimed features of the invention but he fails to teach that applying a color is selected from a group consisting of framing, mat, background, and foreground portions of the template design.

Takayama teaches applying color to the frame(ing), or background portions of the template design. See col. 11, lines 41-45 and lines 50-67.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the color histogram template of Sako to include applying color to the frame(ing), or background portions of the template design, in the same conventional manner as taught by Takayama's col. 11, lines 41-45 and lines 50-67; so that the density of the frame portion of the template image (57) is changed from the color of the background portion of the template image (or design). See Takayama's col. 11, lines 50-67.

5. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sako (US 5689575) in view of Sparks et al. (US 6167382).

As per claim 7, Sako discloses most claimed features of the invention but he fails to teach receiving compensation for providing the template design.

Sparks teaches receiving compensation (e.g., a price) for providing the template design (e.g., template slots). See col. 22, lines 8-25.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the color histogram template of Sako to include a software for receiving compensation for providing the template design, in the same conventional manner as taught by Sparks' col. 22, lines 8-25; so as to provide an integrated system that allows a user to place order at a dedicated Internet site for image templates used for the design and distribution of commercial display materials. See Sparks' col. 1, line 66 to col. 2, line 4.

6. Claims 14-15, 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sako and/or Wang in view of Tushie et al. (US 6202155).

Considering claims 14, 16, and 21-22 Sako discloses most claimed features of the invention including a processor (item 3 or 5, fig. 1); a memory (10, see fig. 3(a) in light of fig. 1(c)) coupled to the processor and a color template design module (incorporated in items 3 and 5, fig. 1) ... to cause the processor (3 or 5) to generate a color template design comprises generating (54, fig. 7b) a histogram for a source image (*see figs. 11 and 14-15 and col. 6, lines 58-60, wherein the source image corresponds to the input image derived from camera 2 of fig. 1 and as depicted in figs. 11-15*); and suggesting a color based on the generated histogram to serve as the color for a template design used to display (4) the source image (*see col. 6, lines 1-23, wherein the mouth template corresponds to the template design*), and display a template, and the color for the template design (as depicted in fig. 1(a), items 4 and 6).

In addition, Wang discloses a processor (109, fig. 1), a memory (107), and a computer-readable-medium (117) that are inherently coupled to the processor through a system bus (not shown), wherein the processor generates a histogram for an image and indicates a color histogram for a template design used to display the image, and display a template, and the color for the template design. See col. 11, lines 32-59, and col. 12, lines 36-62).

Sako, however, fails to show a memory coupled to the processor through a system bus; and a computer-readable medium coupled to the processor through the system bus.

Tushie discloses a processor, a memory and a computer-readable-medium coupled to the processor through a system bus. See col. 4, lines 38-41.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the color histogram template of Sako to include the typical computer system configuration including a memory coupled to the processor through a system bus; and a computer-readable medium coupled to the processor through the system bus, in the same conventional manner as taught by Tushie' col. 4, lines 38-41; in order to allow the computerized system to transfer data among the connected components.

In addition, Sako fails to teach suggesting a color for subsequent user selection based on a generated histogram, by displaying at least one color for the template design.

Wang, in a similar art, teaches suggesting a color for subsequent user selection by displaying at least one color for the template design (see col. 15, line 52 to col. 16, line 3), based on a generated histogram (see col. 11, lines 32-59, col. 12, lines 36-62).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the color histogram template of Sako to include the suggestion for color selection for subsequent user selection for the template design, in the same conventional manner as taught by Wang; in order to allow the computer user to make changes to the overall scheme of the image so as to match the color in an existing image template. See col. 15, line 52 to col. 16, line 3.



Re claim 15, Sako discloses a color that matches a color of the source image (e.g., determine which color that occurs more frequently in the input image based on histogram values from a group of similar colors represented by the box in the histogram. See col. 5 lines 61 to col. 6 line 23. Note that in determining the color that is used in the input image based on the group of similar colors in the box histogram, the system inherently matches a color of the color histogram with the input or source image).

As per claim 17, Sako [inherently] discloses a selected portion of the source image is used to generate the histogram. (It is noted that since the system at step 22 detects a facial area of the captured image (see col. 4, lines 60-61) and later, at step 22e, generates a histogram using the input image (see fig. 14 and col. 6, lines 58-61), it is inherent that a selection portion of the source image need be indicated for the generation of the histogram. See the depiction at fig. 14 in which an area portion  $[p(x,y)]$  of the input image is utilized for the generation of histogram).

7. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sako, Wang and Tushie, as applied to claim 14, and further in view of Takayama et al.

As per claim 18, Sako, Wang and Tushie disclose most claimed features of the invention, as applied to claim 14, but they fails to teach the color applied to the portions of the template design is selected from a group consisting of framing, mat, background, foreground portions of the template design.

Takayama teaches applying color to the frame(ing), or background portions of the template design. See col. 11, lines 41-45 and lines 50-67.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the color histogram template of Sako, Wang and Tushie to include applying color to the frame(ing), or background portions of the template design, in the same conventional manner as taught by Takayama; so that the density of the frame portion of the template image (57) is changed from the color of the background portion of the template image (or design). See Takayama's col. 11, lines 50-67.

8. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sako, Wang and Tushie, as applied to claim 14, and further in view of Sparks et al.

As per claim 7, Sako, Wang and Tushie disclose most claimed features of the invention, as applied to claim 14, but they fail to teach receiving compensation for providing the template design.

Sparks teaches receiving compensation (e.g., a price) for providing the template design (e.g., template slots). See col. 22, lines 8-25.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the color histogram template of Sako, Wang and Tushie to include a software for receiving compensation for providing the template design, in the same conventional manner as taught by Sparks' col. 22, lines 8-25; so as to provide an integrated system that allows a user to place order at a dedicated Internet site for image templates used for the design and distribution of commercial display materials. See Sparks' col. 1, line 66 to col. 2, line 4.

9. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sako and/or Wang in view of Jammes et al. (US 20030167213).

Considering claim 6, Sako and/or Wang disclose most claimed features of the invention, but they fail to teach executing an Internet browsing application and generating a web page containing data that displays information selected from a group consisting of color template design data, advertisements, banners, text, etc....

Jammes discloses executing (102/112, fig. 1) an Internet browsing application (see paragraph 85) and generating (102) a web page containing data that displays information selected from a group consisting of color template design data (e.g., template background color or pattern), advertisements (e.g., display information about groups or products to a consumer, see paragraph 10), banners (e.g., logo), text (e.g.; textual tile). See paragraphs 305, 330, 343 and 358.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the color histogram template of Sako and/or Wang to include the executing an Internet browsing application and generating a web page containing data that displays information selected from a group consisting of color template design data, advertisements, banners, and text in the same conventional manner as taught by Jammes; in order to allow a user with average technical knowledge to efficiently and easily design and maintain an electronic store over the internet. See Jammes' paragraphe 4.

Art Unit: 2676

10. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sako, Wang and Tushie, as applied to claim 14, and further in view of Jammes et al. (US 20030167213).

Considering claim 19, Sako, Wang and Tushie disclose most claimed features of the invention, but Sako fails to teach executing an Internet browsing application and generating a web page containing data that displays information selected from a group consisting of color template design data, advertisements, banners, text, etc....

Jammes discloses executing (102/112, fig. 1) an Internet browsing application (see paragraph 85) and generating (102) a web page containing data that displays information selected from a group consisting of color template design data (e.g.; template background color or pattern), advertisements (e.g.; display information about groups or products to a consumer, see paragraph 10), banners (e.g.; logo), text (e.g.; textual tile). See paragraphs 305, 330, 343 and 358.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the color histogram template of Sako, Wang and Tushie to include the executing an Internet browsing application and generating a web page containing data that displays information selected from a group consisting of color template design data, advertisements, banners, and text in the same conventional manner as taught by Jammes; in order to allow a user with average technical knowledge to efficiently and easily design and maintain an electronic store over the internet. See Jammes' paragraph 4.

***Conclusion***

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sajous Wesner whose telephone number is 571-272-7791. The examiner can normally be reached on Mondays thru Fridays between 11:00 and 7:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matthew Bella can be reached on 571-272-7778. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**Wesner Sajous**

  
10/27/05